

# **Exhibit C**

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 Before The Honorable Virginia K. DeMarchi, Magistrate Judge

4  
5 TAYLOR, et al., )

6 Plaintiffs, )

7 vs. )

Case No. C 20-07956-VKD

8 GOOGLE, LLC, )

9 Defendant. )

10  
11 San Jose, California  
Tuesday, August 19, 2025

12 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
13 RECORDING 10:02 - 12:54 = 2 HOURS 52 MINUTES

14 APPEARANCES:

15 For Plaintiffs:

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18 BY: GLEN E. SUMMERS, ESQ.

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22  
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24  
25 (APPEARANCES CONTINUED ON NEXT PAGE)

1 motion for class certification and a Daubert motion. As  
2 between the two, we would like to focus on the motion for  
3 class certification today and use our time there. Ms.  
4 Giulianelli will be handling that, but I just wanted to make  
5 that clear. That's the one we think is priority for the  
6 day.

7 THE COURT: Okay. And how did the Defendants  
8 think you should proceed?

9 MR. SOMVICHIAN: Your Honor, I agree we should  
10 focus on the class certification issues. The Daubert issues  
11 are -- are also important. We'll take our cues as to when  
12 and -- and how you want to address those, but I agree the  
13 class certification motion is probably the right place to  
14 start.

15 THE COURT: That was my sense as well, although it  
16 seemed to me like there may be some Daubert issues that --

17 MR. SOMVICHIAN: Yes.

18 THE COURT: -- overlap with some of the questions  
19 that are presented. So, before we get that -- to that  
20 issue, nobody asked for this hearing to be conducted under  
21 seal. I have not dug into your extremely large omnibus  
22 motion to seal papers.

23 Are there massive disagreements about what should and  
24 should not be sealed for purposes of the class cert briefing  
25 and the Daubert briefing?

1 interrupt me and tell me to move on if I don't need to, but  
2 for class certification, I think the key point is that  
3 everything is going to be shown with common evidence, and  
4 that includes all of the elements of conversion. It  
5 includes consent and implied consent. Class -- conversion  
6 cases are routinely certified for class treatment. We cite  
7 them, McClure, Wycart (phonetic), in our brief, and those  
8 are cases where consent was disputed, and cases involving  
9 issues of consent, including implied consent, are also  
10 routinely certified in nonconversion cases as well, the  
11 Frasco v. Flo Health case in the Northern District of  
12 California. And, of course, the reason -- and I think your  
13 Honor touched on this -- is because implied and express  
14 consent are both judged by the objective reasonable person  
15 standard. And, so, Judge Donato said you apply that  
16 standard, and that is what you look at in -- in arguing  
17 looking at issues of consent on a class-wide basis.

18 And, so, you know, Google's arguments that there are  
19 different versions of software, different settings and  
20 different cellular data plans fail, of course. The  
21 transfers all come from GmsCore. They all have certain  
22 defining objective characterizations, and none of the  
23 settings disclose the transfers or how they happen over  
24 cellular, how often they happen or what they are.  
25 Therefore, they don't give all the material facts to any

1 MS. GIULIANELLI: But that is correct.

2 THE COURT: I understand that that's -- that's the  
3 theory. So, okay. So -- so, then your -- your -- the way I  
4 understand your argument then is that the project is to  
5 value that but the -- the factual basis for coming up with  
6 value uses -- maybe subset isn't the right word but uses  
7 only the data that is identified as metered to do the  
8 valuation?

9 MS. GIULIANELLI: That is correct. And I think it  
10 -- that is correct because unmetered includes WiFi and --  
11 and some of the new 5G plans. So, it's a conservative  
12 damages calculation.

13 THE COURT: Okay. All right. I think -- I think  
14 I get that.

15 MS. GIULIANELLI: But I see why that's confusing.

16 THE COURT: Yes. Okay. So, this gets in a little  
17 bit to the Daubert issue I think, and I'm just going to ask  
18 this question out loud. The -- the thing that I found most  
19 compelling about Google's argument on the Daubert damages is  
20 that the Plaintiffs' experts don't seem to be valuing the it  
21 that you have described to me as the converted data. They  
22 are valuing other things, bigger things, broader things.  
23 But I want to make sure that I really understand the  
24 Plaintiffs' argument. So, in other words, the marginal data  
25 theory really resonated with me, that you should be trying

1 that opinion. There's an active market. We have pricing  
2 data. Doctor Gos, on the other hand, argues that we should  
3 look at the secondary market and wonder, ask the  
4 hypothetical how much would a consumer charge Google.  
5 Doctor Etner responds to that and says, We don't -- that  
6 there is no active market there. We don't have data, and I  
7 think it's a battle of the experts, and it's for the jury to  
8 determine, and there's evidence going both ways. But I -- I  
9 don't think --

10 THE COURT: See, I'm troubled by that because --  
11 for two -- two reasons. First of all, the damages model has  
12 to match the liability theory. So, if the liability theory  
13 is one thing, then the damages model has to value that.  
14 And, secondly, the case law says there doesn't have to be an  
15 actual market. What we are trying to do is use the  
16 information that we have to say in the hypothetical world  
17 what would be the fair market value of this thing, but you  
18 can't say, Well, there's no market for that thing.  
19 Therefore, we're going to value some other thing which has  
20 not matched your liability theory. And that's where I  
21 really struggled, because it seems to me like there is  
22 evidence in the world from which experts could necessarily  
23 agree but could infer the value of the thing that is  
24 actually converted. And, so -- so, I was -- I was troubled  
25 by the idea that, well, we're going to value something else.

1 marginal value was an important distinction over what your  
2 expert's methodology was, and I was worried about that  
3 because your expert seems to be valuing something other than  
4 what is converted.

5 MR. SUMMERS: On that, your Honor, I would  
6 disagree. Look, we calculate the precise amount of cellular  
7 data being consumed by Google for the challenged transfer,  
8 and they track this. Every single transfer is actually  
9 tagged and tracked, whether it's metered --

10 THE COURT: Got it.

11 MR. SUMMERS: We -- we calculate the exact quantum  
12 that Google has converted for its own purposes, and our  
13 experts then determine the market value, the fair market  
14 value of that data using the industry accepted methodology  
15 that the industry uses.

16 THE COURT: What's the industry accepted  
17 methodology that you're referring to?

18 MR. SUMMERS: Doctor Etner's average --

19 THE COURT: Total revenue divided by total data  
20 usage?

21 MR. SUMMERS: It's -- essentially, yes, that is  
22 the -- that is the model that Doctor Etner uses. Every two  
23 years, he prepares a report for the cellular  
24 telecommunications industry association with all the  
25 carriers and Google members. They then utilize this data

1 the schedule. And I think the circumstances here warrant  
2 it.

3 Just a couple other things. I know the Court doesn't  
4 want to hear about the Chupo case, but --

5 THE COURT: Well --

6 MR. SOMVICHIAN: -- the very same arguments  
7 presented here were teed up for the Chupo court twice, in  
8 2023 and just recently we provided the most recent decision,  
9 but --

10 THE COURT: Okay. Let me just pause you there  
11 because -- let me just sort of say a thing about Chupo,  
12 which, okay, if somebody gave evidence in Chupo, you know,  
13 so it's like prior testimony, fair game, right. Fair game  
14 in our case, in our trial, whatever. The fact that there  
15 was a decision on some objection, motion, whatever, in  
16 Chupo, unless it's binding on me, you know, maybe it has  
17 some persuasive value, but I'm not inclined to allow a bunch  
18 of supplemental briefing on that. So, I really -- no. That  
19 just -- no. We already have piles of material.

20 So, I just wanted to share with you guys that's my  
21 reaction is obviously if somebody made an admission in the  
22 trial, totally fair game here. But unless and until you  
23 tell me that some judge in the State Court system has made a  
24 binding decision, and I would be delighted to hear that --  
25 then I just -- don't expend your time on it.



1 MR. SUMMERS: On the -- that issue, two things,  
2 your Honor. I'm -- and I'm not arguing for the supplemental  
3 briefs right now. I was just --

4 THE COURT: Okay.

5 MR. SUMMERS: -- pointing out that we did submit  
6 the Chupo Court's initial decision denying -- basically  
7 carbon copies of the Daubert motions here was submitted as  
8 Exhibit 6 to their declaration, and we just submitted  
9 overnight the more recent decision that you then rejected  
10 their -- I mean, that's -- I mean carbon copy, verbatim the  
11 same motion.

12 THE COURT: I -- I know, but I'm not going to turn  
13 this into a sort of parallel proceeding on your post-trial  
14 motions in Chupo. I'm just not going to do that. So, I  
15 just --

16 MR. SUMMERS: Understood. One other thing, your  
17 Honor. Just to advise the Court, I do think that we will be  
18 making a motion for collateral estoppel, and but we will do  
19 so on or before the schedule for summary judgment. This  
20 case is all fours with Chupo. The case was tried. There  
21 was a special verdict form. All the issues were decided  
22 from whether this was property to the -- to the way to  
23 calculate damages. And the jury adopted Doctor Etner's  
24 average price methodology awarding damages, you know, that  
25 -- that reflected an adoption or finding of conversion as to

1 all four of the categories that we're going to be presenting  
2 in this case, the exact quantity of data that we provided to  
3 them, and his average industry price.

4 So, we do anticipate doing that. The -- the response  
5 we anticipate is that collateral estoppel will not be fully  
6 applicable until there's an appeal.

7 THE COURT: Well, don't you just need a judgment?  
8 Has judgment been entered?

9 MR. SUMMERS: A judgment has been entered.

10 THE COURT: Okay.

11 MR. SUMMERS: As of July 11th, and it reflects the  
12 jury's verdict. Post-trial briefing will be concluded and  
13 decided by November. But -- but --

14 THE COURT: Okay.

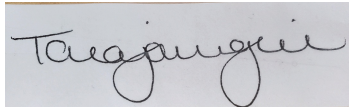
15 MR. SUMMERS: -- we will be making a motion for  
16 collateral estoppel, which might necessitate a stay for the  
17 appeal because under California law, the decision is not  
18 fully binding for collateral estoppel purposes at least  
19 until the appeal through the California Court of Appeal has  
20 been decided.

21 THE COURT: Okay. Well, that -- that's helpful to  
22 know that that request may be coming. I mean, from my very  
23 very selfish point of view, I'd rather not do a lot of work  
24 on something that is not going to matter because there are  
25 other events that will have or have already overtaken what

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A handwritten signature in cursive script, appearing to read "Teagunee", is centered within a light gray rectangular box.

Echo Reporting, Inc., Transcriber

Saturday, August 23, 2025